

Judge
Cardone

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2003 AUG 13 PM 1:45
CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY

RICARDO ORDONEZ, AND ALL
OTHERS SIMILARLY SITUATED

PLAINTIFFS

V.

Cause No. _____

THE CITY OF EL PASO, TEXAS
MAYOR JOE WARDY, ANGELICA JUAREZ
BARILL, MARIA RAMIREZ, REGINA ARDITTI,
DAN ROBLEDO, CARL HORKOWITZ, AS
MUNICIPAL COURT JUDGES, AL AVILA,
AS CITY PROSECUTOR, RICHARDA MOMSEN
DUFFY, AS MUNICIPAL COURT CLERK,
DEFENDANTS, ALL IN THEIR OFFICIAL
CAPACITY

DEFENDANTS.

EP03CA0309

NOTICE OF REMOVAL AND
MOTION TO CONSOLIDATE, WITH AUTHORITIES

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

1. The City of El Paso ("City"), and Mayor Joe Wardy, Angelica Juarez Barill, Maria Ramirez, Regina Arditti, Dan Robledo, Carl Horkowitz ("Municipal judges"), Al Avila, and Richarda Momsen Duffy, all known as "City defendants" and all sued in their official capacities, are defendants in a civil action filed on August 7, 2003 in the 346th Judicial District Court of El Paso County, Texas, and styled *Ricardo Ordoñez, and All Others Similarly Situated, plaintiffs v. The City of El Paso, and Mayor Joe Wardy, Angelica Juarez Barill, Maria Ramirez, Regina Arditti, Dan Robledo, Carl Horkowitz, as Municipal Court Judges, Al Avila, as City Prosecutor and Richarda*

Momsen, as Municipal Court Clerk, All in Their Official Capacity, defendants cause number 2003-3289. A copy of the state court petition and service of process is attached, and constitutes all process, pleading, and orders served in the action. Pursuant to 28 U.S.C. Sections 1441 and 1446, the City and all City defendants file this notice of removal of the civil action to the United States District Court for the Western District of Texas, El Paso Division, and show:

2. The petition in this action was served on the defendant, City¹, on August 12, 2003, and this notice of removal is timely under 28 U.S.C. § 1446(b) in that it is filed within 30 days of receipt of the petition.

3. This court has supplemental jurisdiction over this matter because the removed state court petition alleges claims identical to those contained in two cases now pending in federal court² involving the same class of plaintiffs, the same defendants, and the same issues and causes of action stemming from alleged acts and omissions at the El Paso Municipal Courts. Removal of this action is proper, therefore, under 28 U.S.C. §§ 1367 and 1441 because the action brought in state court involves the same case and controversy and derives from a common nucleus of operative fact. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130 (1966).

¹ Because all individual defendants are sued in their official capacity, it is tantamount to a suit against the entity itself, and the entire lawsuit is to be treated as a suit against the City. *Hafer v. Melo*, 502 U.S. 21, 23-27, 112 S.Ct. 358, 361-362, 116 L.Ed.2d 301 (1991); *Turner v. Houma Municipal Fire and Police Civil Service Board*, 229 F.3d 478, 483 (5th Cir. 2000).

² See *Reyes, et al v. the City of El Paso, et al*, Cause No. EP-02-CA-102-PRM and *Jennnings, et al v. The City of El Paso, et al*, Cause No. EP-03-CA-0286-PRM

4. Joined in this action with the claim described above are a claim of class action, injunctive relief, declaratory relief arising under the laws of the State of Texas. As mentioned above, these claims fall under the supplemental jurisdiction of the district courts of the United States in that they are so related to the federal claim that they form part of the same case or controversy under Article III of the United States Constitution. All claims result from the same incident or series of incidences, and all result in the same injury to the plaintiffs. Because of the relationship of these claims, this entire action falls under the jurisdiction of the district courts of the United States. *In re Abbot Laboratories*, 51 F.3d 524, 529 (5th Cir. 1995).

5. Because this Court has jurisdiction of the previously removed and filed action in accordance with the provisions of Title 28 U.S.C., §1331, §1343, this cause of action is ripe and proper for removal under the provisions of 28 U.S.C. §§1441, 1446 and 1367.

6. The plaintiffs, through their attorney, are being given written notice of the filing of this removal, and a copy of this notice is also being filed with the clerk of the 346th Judicial District Court of El Paso County, Texas.

Motion to Consolidate

7. On July 23, 2003, only 15 days before the filing of the instant state court petition, plaintiffs' counsel filed an original petition and application for injunctive relief and class certification in the 346th District Court, El Paso County, Texas, styled *Chris Jennings, and All Others Similarly Situated, Plaintiffs, v. The City of El Paso Mayor Joe Wardy, Susan Austin, Robert Cushing, Jose Alexandro Lozano, John Cook,*

Dan Power, Paul Joseph Escobar, Vivian Rojas, and Anthony Cobos, as City Councilpersons, Angelica Juarez Barill, Maria Ramirez, Rick Porras, Regina Arditti, Dan Robledo, Carl Horkowitz, as Municipal Court Judges, Al Avila, as City Prosecutor, Richarda Momsen Duffy, as Municipal Court Clerk, all in Their Official Capacities, cause number 20030D03252.

8. On July 24, 2003, the defendants removed the *Jennings* case because this court has original jurisdiction over the subject matter in that suit, 42 U.S.C. § 1983, a federal civil rights law, as alleged in the petition, and such removal was assigned federal district court cause number EP-03-CA-0286-PRM.

9. Defendants allege that the instant action and the *Jennings* case, cited above, involve a common question of law and fact and, in reality, are identical lawsuits involving the same class of plaintiffs, the same defendants, the same legal theories, and the same issues in controversy. Because of this, the defendants request that the court consolidate the instant removed action with that styled *Chris Jennings, et al, v. The City of El Paso, et al*, cause no. EP-03-CA-0286-PRM. Fed. R. Civ. Proc. 42(a); *Dupont v. Southern Pacific Company*, 366 F. 2d 193 (5th Cir. 1966) (“Trial judges are urged to make good use of Rule 42(a) (consolidation)...where there is involved a common question of fact and law as to the liability of the defendant in order to expedite the trial and eliminate unnecessary repetition and confusion....”)

WHEREFORE, the City of El Paso and all defendants, respectfully pray that the civil action pending in the 346th Judicial District Court of El Paso County, Texas, styled: *Ricardo Ordoñez, and All Others Similarly Situated, plaintiffs v. The City of El*

Paso ("City"), and Mayor Joe Wardy, Angelica Juarez Barill, Maria Ramirez, Regina Arditti, Dan Robledo, Carl Horkowitz, Al Avila, and Richarda Momsen, defendants cause number 2003-3289 be removed to the United States District Court, Western District of Texas, El Paso Division, and that it be consolidated with the pending federal case of *Jennings, et al, v. City of El Paso, et al*, cause no. EP-03-CA-0286-PRM, and that this Court assume jurisdiction over the action in both cases, as provided by law.

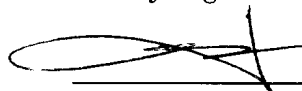
Respectfully submitted,



John Gates, Ass't City Atty
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State Bar # 07752780
Attorney for City of El Paso
and all City defendants

CERTIFICATE OF SERVICE

I certify that on the 13 day of Aug, 2003 a true and correct copy of this document was delivered to Mr. Fernando Chacon, 109 N. Oregon, Ste. 1119, El Paso, TX 79901 by facsimile transfer and by regular mail.



John Gates